

Alexander W. Moore  
Associate General Counsel – New England



185 Franklin Street, 13<sup>th</sup> Floor  
Boston, MA 02110-1585

Phone 617 743-2265  
Fax 617 737-0648  
[alexander.w.moore@verizon.com](mailto:alexander.w.moore@verizon.com)

September 6, 2006

Mary L. Cottrell, Secretary  
Department of Telecommunications & Energy  
Commonwealth of Massachusetts  
One South Station, 2<sup>nd</sup> Floor  
Boston, Massachusetts 02110

**Re: DTE 06-56 – Petition of Charter Fiberlink MA-CCO, LLC  
for Arbitration of an Interconnection Agreement**

Dear Secretary Cottrell:

Enclosed for filing in the above-referenced matter is Verizon Massachusetts' Motion for Protective Order and Affidavit of John Conroy.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alex Moore".

Alexander W. Moore

cc: Carol Pieper, Arbitrator  
DTE 06-56 Service List

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

In the Matter of Petition for Arbitration of an  
Interconnection Agreement Between Charter  
Fiberlink MA-CCO, LLC, and Verizon-  
Massachusetts Inc.

D.T.E. Docket No. 06-56

**MOTION FOR PROTECTIVE ORDER**

**INTRODUCTION**

Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon MA”) respectfully requests that the Arbitrator order that the certain data sought by Charter Fiberlink MA-CCO ({{Charter}}) in its Data Requests 1.1 and 1.17 is protected from discovery and need not be produced by Verizon MA. As grounds for this motion, Verizon MA states that the data at issue – the names of companies having fiber meet arrangements with Verizon MA in Massachusetts and the locations of those arrangements (*see* Request 1.1<sup>1</sup>) and the names of the Massachusetts communities in which Verizon MA intends to introduce its FiOS high-speed internet access service over the next 30 months (*see* Request 1.17) constitute trade secrets and confidential, proprietary information of, respectively, those competitive carriers and Verizon MA, and that the protections afforded under a protective agreement between the parties are insufficient to protect Verizon MA and the other carriers from undue risk of harm due to disclosure and use of this

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<sup>1</sup> By its terms, Request 1.1 asks only that Verizon MA identify those companies by category of carrier, which Verizon has done, and not by name. *See* Data Request 1.1 and Verizon MA’s Opposition to Charter’s Motion to Compel, at 2. Charter, however, claims otherwise. *See* Charter Motion to Compel, at 5-6. If the Arbitrator agrees with Verizon MA, as a plain reading of Request 1.1 would warrant, or if the Arbitrator finds that this data is not relevant to this proceeding, as Verizon MA also demonstrated in its Opposition to the Motion to Compel, then the Arbitrator need not address that portion of this motion concerning the names of the other parties to the fiber meet arrangements.

valuable information by their competitors, including Charter. As further grounds for this motion, Verizon MA states the following.

### **ARGUMENT**

Section 5 of Massachusetts General Laws Chapter 25 provides that “[t]he Department may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter.”

In determining whether certain information qualifies as a “trade secret,”<sup>2</sup> Massachusetts courts have considered the following:

- (1) the extent to which the information is known outside of the business;
- (2) the extent to which it is known by employees and others involved in the business;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and its competitors;
- (5) the amount of effort or money expended by the employer in developing the information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

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<sup>2</sup> Under Massachusetts law, a trade secret is “anything tangible or electronically kept or stored which constitutes, represents, evidences or records a secret scientific, technical, merchandising, production or management information design, process, procedure, formula, invention or improvement.” Mass. General Laws c. 266, § 30; see also Mass. General Laws c. 4, § 7. The Massachusetts Supreme Judicial Court (“SJC”), quoting from the Restatement of Torts, § 757, has further stated that “[a] trade secret may consist of any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors ... It may be a formula treating or preserving material, a pattern for a machine or other device, or a list of customers.” J.T. Healy and Son, Inc. v. James Murphy and Son, Inc., 260 N.E.2d 723, 729 (1970).

Jet Spray Cooler, Inc. v. Crampton, 282 N.E.2d 921, 925 (1972). The protection afforded to trade secrets is widely recognized under both federal and state law. In Board of Trade of Chicago v. Christie Grain & Stock Co., 198 U.S. 236, 250 (1905), the U.S. Supreme Court stated that the board has “the right to keep the work which it had done, or paid for doing, to itself.” Similarly, courts in other jurisdictions have found that “[a] trade secret which is used in one’s business, and which gives one an opportunity to obtain an advantage over competitors who do not know or use it, is private property which could be rendered valueless ... to its owner if disclosure of the information to the public and to one’s competitors were compelled.” Mountain States Telephone and Telegraph Company v. Department of Public Service Regulation, 634 P.2d 181, 184 (1981).

I. The Names of Massachusetts Municipalities, If Any, In Which Verizon MA Intends To Introduce FiOS Service In The Future Is a Trade Secret And Highly Sensitive, Proprietary Information That Should Not Be Produced.

Verizon MA’s plans, if any, to expand the availability of FiOS service to additional communities in Massachusetts is a trade secret and highly valuable, proprietary, confidential data of Verizon MA, and any disclosure of such information to the public or to Charter – a direct competitor or Verizon MA in at least two lines of business – would destroy the value of that information to Verizon MA and hand Charter a large competitive advantage in the market. *See* Affidavit of John Conroy, filed herewith, ¶ 3.

Verizon MA offers FiOS service only over its revolutionary fiber-to-the-premises (“FTTP”) network upgrade that is capable of providing not only Internet access at speeds greater than that offered by DSL or current cable TV companies, but also voice service as well as video. Thus, the availability of FiOS in a town indicates that Verizon MA has upgraded its facilities to FTTP and could also offer video service in that community in direct competition with cable television companies such as Charter. Conroy Affidavit, ¶ 4.

Verizon MA's intentions as to future availability of FiOS are a trade secret, and an extraordinarily valuable one at that, under Massachusetts law, as a rundown of the Jet Spray Cooler factors demonstrates. Verizon MA from time to time announces expansion of FiOS into a particular town, and customers can learn on Verizon's website whether FiOS is currently available at their location. Other than where a particular public announcement has been made, however, Verizon maintains this information as highly confidential. Verizon MA has not disclosed outside the company its intentions to expand FiOS availability to particular additional towns and, to Verizon MA's knowledge, that information is not known outside the company. Conroy Affidavit, ¶ 5. Indeed, even within the company, knowledge of that information is limited to employees with a need to know. *Id.*

Moreover, it is difficult to overstate the value – both to Verizon MA and Charter – of the data Charter seeks. Disclosure of Verizon MA's future intentions to make FiOS service available in additional towns in Massachusetts would amount to handing Charter a roadmap showing where and when Verizon MA intends to compete with it for telephone and Internet customers and where Charter could face real competition in its core television business for the first time. Charter will thus have additional time to erect barriers to Verizon MA's coming competition, including among other things by blitzing the subject communities with advertising and reduced rates (a favorite tactic of cable companies facing competition by Verizon) and signing customers to long-term contracts. *Id.* ¶ 6.

The data Charter seeks is also valuable from a cost perspective. Verizon's intentions for FiOS (and FTTP) expansion are the result of a lengthy and ongoing developmental process resting on sustained efforts over many months by many groups within the company, such as Network Engineering, Outside Plant Engineering and Operations. *Id.* ¶ 7. Further, because the

data sought consists of Verizon MA's intentions as to its future conduct, that data cannot be acquired or duplicated by others outside the company.

Moreover, the protections afforded to Confidential Information under the Protective Agreement between the parties are far from sufficient to protect Verizon MA from the unreasonable risk of harm resulting from production of this information to Charter. The chief protections under that Agreement are that it: (1) limits disclosure of confidential information to a defined group of people; and (2) it ostensibly prohibits recipients of confidential information from using it for any purpose other than conducting this proceeding. *See* Protective Agreement, attached hereto as Exhibit A, ¶¶ 1, 3.

Given the competitive value of Verizon MA's intentions for future expansion of FiOS service, however, these terms afford little assurance to Verizon MA that its highly confidential plans for FiOS service will not be used by Charter to competitive advantage in the real world. In the first place, the list of people who may receive confidential information under the protective agreement is long and includes not only outside counsel, but many employees of Charter, such as in-house counsel, in-house legal staff and "economists, operational, technical, and regulatory personnel" who are actively engaged in the conduct of this proceeding. *See id.* ¶ 3. It is simply naive to think that a Charter employee with full knowledge of whether and when Verizon MA plans to introduce FiOS in a particular town will be able to block that information off and will neither disclose it to other Charter employees nor make any use of it whatsoever if and when faced with marketing issues, questions or demands. Verizon MA should not have to run such a risk – indeed any risk – that its intentions to make use of its revolutionary FiOS system will be used against it by its direct competitor. Accordingly, it is critically important that Charter not be allowed any access to this information in this proceeding.

This concern applies as well to Charter's outside counsel, not because he might use the information, but because he cannot possibly use it in this proceeding without consulting with and disclosing it to Charter. Charter has claimed in its Motion to Compel, at 24, that it requires this data in order to determine where Verizon MA might have spare fiber, thus potentially reducing the cost of building a fiber meet arrangement. Of course, Verizon MA maintains that Charter cannot determine, merely by knowing the name of a town in which Verizon MA intends to offer FiOS in the next 30 months, whether Verizon MA has spare fiber at particular location to serve a fiber meet point for Charter.<sup>3</sup> But there can be no doubt whatsoever that Charter's outside counsel could not possibly make such a determination on his own without consulting with Charter. For this reason, merely ordering that this data be produced for outside counsel's eyes only does not insulate Verizon MA from unreasonable risk of harm through the disclosure and use of its trade secrets and commercially valuable, confidential information

Accordingly, the Arbitrator should order that Verizon MA need not produce data in response to Charter's request in Request 1.17 for the names of communities in which Verizon MA's intends to introduce FiOS in the future.

**II. The Identities Of Companies With Fiber Meet Arrangements In Massachusetts And The Locations Of Those Arrangements Are Trade Secrets And Proprietary Information That Is Not Adequately Protected by The Protective Agreement.**

As Verizon MA stated in its Motion for Confidential Treatment concerning the Department's Data Request 1-2, the fact that a particular carrier exchanges sufficient traffic with Verizon MA to warrant construction of one or more fiber meet arrangements in Massachusetts is confidential information known only to that carrier and to Verizon MA. As a matter of policy,

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<sup>3</sup> As demonstrated in Verizon MA's Opposition to Motion to Compel, at 14-15, the data Charter seeks in Request 1.17 is irrelevant and falls outside the scope of discovery in this proceeding. The Arbitrator should thus deny Charter's Motion to Compel production of this data and not reach the issues addressed in the instant motion.

Verizon MA does not disclose such carrier proprietary information outside the company, including the locations where competitors have interconnection with Verizon MA. *See* Conroy Affidavit ¶ 8. To Verizon MA's knowledge, none of the carriers whose identity is at issue has publicly disclosed such data either. *Id.* Other carriers, such as Charter and other CLECs, will likely find it valuable to know which of their competitors enjoy the advantages and have gone to the expense of building fiber meet arrangements. *Id.*

Charter and other CLECs would likely find it just as valuable, if not more so, to know the locations of those facilities, as that indicates the area or areas of the state in which competitors have additional facilities and thus where they have focused their marketing efforts and/or have a customer base. This information would hand Charter a valuable competitive advantage in designing and implementing its own marketing efforts. Moreover, given the knowledge in the industry concerning how certain carriers operate, Charter and others could likely deduce, from the location of a fiber meet facility alone, the identify of the competitor who uses that facility. Thus, the names of companies with fiber meet arrangements with Verizon MA and the locations of those arrangements are secret, commercially valuable, confidential information owned by those carriers, and should be protected from discovery by Charter.

Further, the protections afforded to confidential information under the Protective Agreement are insufficient to protect those carriers from unreasonable risk of harm, for reasons similar to those stated in Part I above. Where highly sensitive, commercially valuable, proprietary information such as that at issue here, would be turned over to a direct competitor of the owner of the information, mere contract provisions requiring the recipients of the data to use it only for limited purposes and not to use it in any competitive fashion are unrealistic. Likewise, the names of Charter's competitors who use fiber meet arrangements and the locations of those



arrangements could only be used by Charter in this case, if at all, if its outside counsel shares that data with Charter. Thus, no production of that data is appropriate here.

WHEREFORE, Verizon MA respectfully requests that the Department grant this motion.

Respectfully submitted,

VERIZON NEW ENGLAND INC.

By its attorneys,



Bruce P. Beausejour  
Alexander W. Moore  
185 Franklin Street – 13<sup>th</sup> Floor  
Boston, MA 02110-1585  
(617) 743-2265

James G. Pachulski  
TechNet Law Group, P.C.  
1100 New York Avenue, NW  
Washington, D.C. 2005-3934  
(202) 589-0120

Dated: September 6, 2006

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

In the Matter of Petition for Arbitration of an  
Interconnection Agreement Between Charter  
Fiberlink MA-CCO, LLC, and Verizon-  
Massachusetts Inc.

D.T.E. Docket No. 06-56

**AFFIDAVIT OF JOHN CONROY**

John Conroy herby deposes and says:

1. I am the Verizon New England Inc. ("Verizon MA") Vice President – Regulatory for Massachusetts. I have worked with Verizon MA and its predecessor companies since June, 1972. For all but about two years of my employment at the company, I have been employed in the regulatory area. My current duties include assisting in the development of regulatory policy for Verizon MA; advocating for implementation of that policy before the Department and sometimes in other forums; responding to the efforts of others to change or adopt regulatory policies before regulatory, legislative and executive agencies and officials; and generally advocating the interests of Verizon MA. I am also familiar with the company's practices with respect to protection against disclosure of confidential information and, in particular, Verizon's treatment of confidential information concerning its FiOS service.

2. I offer this affidavit in support of Verizon MA's Motion for Protective Order, filed herewith.

3. Verizon MA's plans, if any, to expand the availability of FiOS service to additional communities in Massachusetts is a trade secret and highly valuable, proprietary,

confidential data of Verizon MA, and any disclosure of such information to the public or to Charter – a direct competitor of Verizon MA in at least two lines of business – would destroy the value of that information to Verizon MA and hand Charter a large competitive advantage in the market.

4. Verizon MA offers FiOS service only over its revolutionary fiber-to-the-premises (“FTTP”) network upgrade that is capable of providing not only Internet access at speeds greater than that offered by DSL or current cable TV companies, but also voice service as well as video. Thus, the availability of FiOS in a town indicates that Verizon MA has upgraded its facilities to FTTP and could also offer video service in that community in direct competition with cable television companies such as Charter.

5. Verizon MA from time to time announces expansion of FiOS into a particular town, and customers can learn on Verizon’s website whether FiOS is currently available at their location. Other than where a particular public announcement has been made, however, Verizon maintains this information as highly confidential. Verizon MA has not disclosed outside the company its intentions to expand FiOS availability to particular, additional towns and, to my knowledge, that information is not known outside the company. Indeed, even within the company, knowledge of that information is limited to employees with a need to know.

6. Moreover, it is difficult to overstate the value of this data. Disclosure of Verizon MA’s future intentions to make FiOS service available in additional towns in Massachusetts would amount to handing Charter a roadmap showing where and when Verizon MA intends to compete with it for telephone and Internet customers and where Charter will face real competition in its core television business for the first time. Charter will thus have additional time to erect barriers to Verizon MA’s coming competition, including among other things by

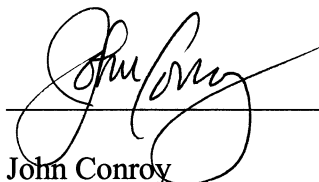
blitzing the subject communities with advertising and reduced rates (a favorite tactic of cable companies facing competition by Verizon) and signing customers to long-term contracts.

7. Verizon's intentions for FiOS expansion are the result of a lengthy and ongoing developmental process resting on sustained efforts over many months by many groups within the company, such as Network Engineering, Outside Plant Engineering and Operations.

8. As a matter of policy, Verizon MA does not disclose outside the company proprietary information of other companies with whom it does business, such as the name of the company and the location of its interconnection facilities with Verizon MA, including the locations of fiber meet arrangements. To my knowledge, none of the carriers who have fiber meet arrangements with Verizon MA in Massachusetts has publicly disclosed such data either. Competitors of those carriers, such as Charter and other CLECs, will likely find it valuable to know which of their competitors enjoy the advantages and have gone to the expense of building fiber meet arrangements.

9. Charter and other CLECs would likely find it just as valuable, if not more so, to know the locations of those facilities, as that indicates the area or areas of the state in which competitors have additional facilities and thus where they have focused their marketing efforts and/or have a customer base. This information would hand Charter a valuable competitive advantage in designing and implementing its own marketing efforts.

Signed under the pains and penalties of perjury this 6<sup>th</sup> day of September, 2006.

  
John Conroy

*Nancy E. Milligan*  
*My Commission Expires March 29, 2013*

